

February 7, 2005

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Country of Origin Labeling Program
Agricultural Marketing Service
1400 Independence Avenue SW
USDA STOP 0249
Washington, D.C. 20250-0249

RE: Comments On Country Of Origin Labeling For Fish And Shellfish

Dear Sir or Madam:

Thank you for initiating the above-referenced rulemaking to require country-of-origin labeling for fish and fish products (with some exceptions) offered for sale to ultimate consumers in the United States. These comments support the proposed rule, with important modifications and extensions suggested herein.

A. Introduction & Summary

These comments are offered on behalf of the Salmon Spawning & Recovery Alliance (“SSRA”), a non-profit organization recently formed to encourage federal actions that will promote the ocean survival and successful return and reproduction of Pacific salmon that are listed as threatened or endangered under the Endangered Species Act (“ESA”). SSRA is modeled on the Atlantic Salmon Federation and similar organizations that have helped save endangered and threatened fish species such as the striped bass and redbfish. SSRA’s members, when the organization is fully “up and running,” are expected to include local governments whose taxpayers bear the costs of salmon habitat protection and restoration, electric utilities whose ratepayers also bear such costs, salmon conservation organizations, individual members, and other entities both locally within the Pacific Northwest and nationally.

Pacific salmon are unique because they continue to be deliberately caught, killed, and sold for human and animal consumption even though many of the runs are listed as threatened or endangered under the ESA. Since Pacific salmon reproduce only once, at which point they die, and since their flesh is no longer considered commercially valuable at that point in their life cycle, every ESA-listed Pacific salmon that is caught and killed is a fish

that was killed prior to reproducing, and a fish that is therefore unable to make any contribution at all to recovery of its species or particular listed stock.

All Pacific salmon currently listed as threatened or endangered under the ESA are native to rivers of the Pacific Northwest and California. As adults, and before returning to their native rivers to spawn, these salmon swim together with others in the open sea. There, significant numbers of them are caught and killed by fishermen – including, notably, in Canadian waters. Many if not most salmon caught in Canada are sold abroad. By these means and others, ESA-listed salmon born in U.S. rivers but caught and killed in Canada enter the United States, including as part of the U.S. commercial market for fresh and processed salmon and salmon products.

In the past, there was a significant foreign fleet high seas fishery which theoretically did not target, but still caught significant numbers of, Pacific salmon. Changes in international law during the early 1990s curtailed this practice, but it persists to some extent as an illegitimate fishery, and the catch necessarily includes ESA-listed Pacific salmon runs.

Under the ESA, it is illegal to import ESA-listed salmon into the United States from Canada or elsewhere. Unfortunately, the federal government has not yet acted to curb the importation of ESA-listed salmon – although, as indicated below, we are hopeful that this will soon change.

Meanwhile, the recovery of these ESA-listed salmon is a matter of intense activity, expenditure, and media coverage in the Pacific Northwest and nationally. A great many U.S. consumers of salmon and salmon products would presumably be very grateful for any government action that helps assure them that the salmon they buy are not threatened or endangered. Currently, however, it is impossible for any U.S. consumer to determine this.

The salmon that consumers buy in the market or by mail order (whether fresh, frozen, smoked, or canned) are not required to display on their labels any indication of (1) whether the salmon is threatened or endangered, or (2) the country in which the salmon was caught and killed. Since many ESA-listed salmon are caught and killed in Canada, the latter requirement – county of origin labeling identifying where the fish was killed – would help consumers (and other government agencies) know, at least in the case of Canada-caught Pacific salmon, that the fish involved may very well be threatened or endangered Northwest salmon.¹

¹ Since country of origin labeling does not in itself provide any means for dealing with the capture and killing of ESA-listed Pacific salmon in domestic U.S. fisheries, protection of these threatened and endangered fish also requires a broader labeling program, suggested

For these reasons, and as further discussed below, we urge that you take the following actions:

1. Adopt a country-of-origin labeling requirement for all imported Pacific salmon and salmon products.
2. Require that country-of-origin labeling also apply to smoked Pacific salmon (thus eliminating a proposed exception to the new rule).
3. In addition to country of origin labeling, establish a broader labeling requirement for Pacific salmon so that “Non-Endangered” salmon can be distinguished from ESA-listed salmon (whether caught and killed in the U.S. or abroad), in accordance with a certification program to be adopted and administered by the Department, as further described below.

B. Country of origin labeling for Pacific salmon will help consumers, the Customs Service, and – most important – the ESA-listed salmon themselves.

As noted above, Pacific salmon caught and killed in Canada (not just in the U.S.) include ESA-listed salmon from rivers of the western United States. If all Pacific salmon and salmon products imported from Canada are required to bear the label “Caught in Canada,” then consumers would at least have one way of determining, for the first time, that the salmon they are buying may very well be threatened or endangered under the Endangered Species Act.

Once consumers can identify Canada-caught Pacific salmon, then an ESA-focused consumer education effort by U.S. news media and others will become possible and appropriate. But without “Caught in Canada” labeling, it is pointless for anyone to urge consumers to help protect ESA-listed salmon by, for example, not purchasing Pacific salmon caught and killed in Canada: consumers can’t tell whether a salmon was caught in Canada or not.

herein, that focuses explicitly on the ESA. The current lack of such a broader program, however, provides no justification for failing to require Canada-caught Pacific salmon to be listed by country of origin; as explained herein, country of origin labeling will benefit survival and recovery of the ESA-listed salmon, whereas failure to take the action may in turn jeopardize their survival and recovery.

Most consumers will not knowingly buy salmon they realize may be threatened or endangered. But this requires that consumers have a basis for knowing. Country of origin labeling for Canada-caught Pacific salmon, supplemented with consumer education efforts that others outside the Department can and will undertake, will provide such a basis. In the end, this should yield major benefits to the ESA-listed salmon themselves, helping assure their survival and recovery by reducing consumer demand for any salmon that may have been caught and killed in an “ESA-unfriendly” fishery.

Importantly, it is not only consumers whose efforts to help ESA-listed Pacific salmon will be aided by country-of-origin labeling. The United States Customs Service will be aided as well. It is the job of the Customs Service to prevent the importation into the United States of ESA-listed species. Once all Pacific salmon imported from Canada are labeled as such, the job of the Customs Service will be simplified, since Customs will be better able to identify the importers and distributors of Canada-caught Pacific salmon who currently violate this provision of the ESA. Such ESA enforcement by Customs will in turn drastically reduce Canada-based capture and killing of ESA-listed Pacific salmon, thereby aiding the survival and recovery of these fish (and, as a legal matter under the ESA, helping avert continued jeopardy to these fish as a result of agency action and inaction).

C. For Pacific salmon, there should be no labeling exception for smoked fish.

The proposed rule would exempt smoked fish from the country-of-origin labeling requirement. Whatever the justification for this proposed exemption in the case of fish species not listed under the ESA, this exemption should not apply to smoked Pacific salmon.

A significant portion of all Pacific salmon captured and killed in commercial fisheries ends up being sold in the U.S. as smoked product. Because Pacific salmon caught in Canada include ESA-listed fish from U.S. rivers, it is equally important for consumers – and the Customs Service – to know that a Pacific salmon comes from Canadian fisheries regardless of whether that salmon is sold in fresh, frozen, smoked, or canned form.

In short, in the case of Pacific salmon, there should be no exception to the country of origin labeling rules for smoked fish and fish products.

D. The Department should adopt a broader ESA-focused labeling requirement, backed by a certification program, for Pacific salmon.

The country of origin labeling requirement, when applied to Pacific salmon, will provide consumers and the Customs Service information that will help them protect and thereby speed the recovery of ESA-listed fish. But because many ESA-listed salmon are

caught and killed in U.S. fisheries that make no effort to spare them – not just Canadian ones – it is vital that the labeling requirements for Pacific salmon not be limited to country of origin. Instead, the Department should build on the proposed rule by requiring that labeling for all Pacific salmon sold in the U.S. also indicate specifically whether the salmon was caught and killed in an “ESA-friendly” fishery.

Although the general ocean harvest of Pacific salmon necessarily kills ESA-listed fish as well as others (since these salmon swim together in the sea), it is possible for Pacific salmon to be brought to market from ESA-friendly sources. All farmed salmon, for example, are non-endangered. So are hatchery-reared salmon, which can be caught and killed in selective fisheries that spare ESA-listed fish, provided that the hatchery salmon are marked to enable those who fish for them to identify them as such (for example, with adipose fin-clipping).

Finally, of course, it is possible to catch salmon in a “terminal fishery,” i.e., in or near the mouths and lower reaches of rivers to which the salmon return to spawn, rather than in the more familiar “high seas intercept” fishery. Individual runs of Pacific salmon from many rivers are not threatened or endangered – these include Alaska’s Copper River, Yukon River, and Kenai River, for example, as well as salmon returning to the many rivers that flow into Bristol Bay. Sockeye salmon returning to Canada’s Fraser River are also not listed as threatened or endangered under Canadian statutes. Fisheries agencies, as well as commercial and Tribal fishermen, are readily able to implement “terminal fisheries” for these non-threatened and non-endangered salmon – and, in some cases, they already do.

Pacific salmon from all these existing terminal fisheries – plus farmed salmon (including Atlantic salmon) and hatchery-reared salmon – could be labeled as “Non-Threatened” and “Non-Endangered” in an ESA-specific labeling program. Other salmon, namely those caught in high seas intercept fisheries that make no effort to spare ESA-listed salmon, would be denied the right to use the “Non-Threatened” or “Non-Endangered” labels – or, more powerfully, required to bear a label such as “Warning: This salmon may be threatened or endangered under the Endangered Species Act.”

Such labeling would provide an extraordinarily powerful market-based tool for consumer choice – one that would immediately begin sparing ESA-listed salmon from continued commercial slaughter, and thereby immediately begin aiding their recovery. Conversely, failure to adopt such a labeling requirement – which we believe is long overdue – would represent federal agency action that jeopardizes the survival of these ESA-listed species.

Such a labeling requirement would, of course, necessitate some form of certification program, so that those who wish to use the “Non-Threatened” and “Non-Endangered” labels could establish their qualifications for doing so, while all others would be denied the use of such labels (and, ideally, required to use the “Warning” label mentioned above). This certification program would be easy to design and implement. For example, the program could be created by the U.S. Department of Commerce through NOAA Fisheries, which regulates the capture and killing of Pacific salmon in commercial fisheries.

There are also several non-governmental organizations that exist to certify particular fisheries as “eco-friendly” and environmentally responsible so that participants in those fisheries can gain the marketing advantages of such certification. One of these organizations could also be enlisted to design and implement the certification program quickly and efficiently.

E. The Department should adopt ESA-specific labeling for Pacific salmon now.

We strongly urge the Department to adopt the ESA-specific labeling requirement for Pacific salmon (and to initiate the design process for the requisite certification program) in the context of this rulemaking. At a minimum, the Department should announce in this rulemaking that it will immediately institute a follow-on rulemaking for this purpose. Taking immediate action will save time – and therefore save ESA-listed salmon that otherwise will be caught and killed before they can reproduce and contribute to salmon recovery.

We hope, of course, that the Department will embrace the opportunity to meet its obligation under the ESA to take action that helps protect listed Pacific salmon. Delay would constitute agency action that jeopardizes survival and recovery of these fish. Although the Department may not have considered such a labeling requirement previously, we hope the Department will recognize in response to these comments and as a result of its own analysis that the ESA effectively compels adoption of such a requirement. Since the listed salmon are currently threatened or endangered, and since the labeling requirement and Departmental action to implement it cannot ultimately be avoided consistent with requirements of the ESA, the Department should adopt this labeling requirement now, without delay. Sooner is much better for threatened and endangered salmon than later.

Very truly yours,

Svend Brandt-Erichsen